the original option granted and designating the purchase as a closing transaction.

A put or call purchased to make a closing transaction is identical as to striking price and expiration date. Such put or call need not match the granted option in time of creation, date of acquisition, cost of the entire option or units therein, or number of units subject to the option. If such put or call terminates only part of a grantor's obligation under the granted option, a closing transaction is made as to that part.

(2) The term *property* means stocks and securities (including stocks and securities dealt with on a *when issued* basis), commodities, and commodity futures.

(3) The term *grantor* means the writer or issuer of an option.

(4) The term *straddle* means a simultaneously granted combination of an option to buy and an option to sell the same quantity of property at the same price during the same period of time.

(5) The term *multiple option* means a simultaneously granted combination of an option to buy plus an option to sell plus one or more additional options to buy or sell property.

(c) *Nonapplicability to broker-dealers.* The provisions of this section do not apply to any option granted in the ordinary course of the taxpayer's trade or business of granting options. However, the provisions of this section do apply to:

(1) Gain from any closing transaction with respect to an option and gain on lapse of an option if gain on the sale or exchange of the option would be considered capital gain by a dealer in securities under section 1236(a) and the regulations thereunder, and

(2) Loss from any closing transaction with respect to an option if loss on the sale or exchange of the option would not be considered ordinary loss by a dealer in securities under section 1236(b) and the regulations thereunder.

The preceding sentence shall be applied with respect to dealers in *property* (as defined in paragraph (b)(2) of this section) and without regard to the limitation of the applicability of section 1236 to dealers in securities.

(d) *Nonapplicability to compensatory options.* Section 1234 does not apply to options to purchase stock or other property which are issued as compensation for services, as described in sections 61, 83, and 421 and the regulations thereunder.

(e) *Premium allocation for simultaneously granted options.* The allocation of a premium received for a straddle or multiple option between or among the component options thereof shall be made on the basis of the relative market value of the component options at the time of their issuance or on any other reasonable and consistently applied basis which is acceptable to the Commissioner.

(f) *Effective date.* This section, relating to special rules for the treatment of grantors of certain options, shall apply to options granted after September 1, 1976.

[T.D. 7652, 44 FR 62282, Oct. 30, 1979; 44 FR 67657, Nov. 27, 1979]

§ 1.1234–4   Hedging transactions.

The character of gain or loss on an acquired or a written option that is (or is identified as being) part of a hedging transaction is determined under the rules of § 1.1221–2.

[T.D. 8555, 59 FR 36367, July 18, 1994]

§ 1.1235–1   Sale or exchange of patents.

(a) *General rule.* Section 1235 provides that a transfer (other than by gift, inheritance, or devise) of all substantial rights to a patent, or of an undivided interest in all such rights to a patent, by a holder to a person other than a related person constitutes the sale or exchange of a capital asset held for more than 1 year (6 months for taxable years beginning before 1977; 9 months for taxable years beginning in 1977), whether or not payments therefor are:

(1) Payable periodically over a period generally coterminous with the transferee's use of the patent, or

(2) Contingent on the productivity, use, or disposition of the property transferred.

(b) *Scope of section 1235.* If a transfer is not one described in paragraph (a) of this section, section 1235 shall be disregarded in determining whether or not such transfer is the sale or exchange of